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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In The Matter Of

Possible Revision or Elimination of Rules Under the
Regulatory Flexibility Act, 5 U.S.C. 610

Public Notice DA-05-1524

Part 27 - Miscellaneous Wireless Communications)
Services)

Subpart M - Broadband Radio Service and Educational)
Broadband Service)

To: The Commission

**HISPANIC INFORMATION AND TELECOMMUNICATIONS NETWORK COMMENTS
REGARDING POSSIBLE REVISION OR ELIMINATION OF RULES**

Hispanic Information and Telecommunications Network, Inc. ("HITN"), by its attorneys, hereby submits its comments in response to the Commission's Public Notice, released May 31, 2005, in the above-referenced matter.

Introduction

In its *Public Notice*, the Commission sought comment on whether certain rules in Part 27, relating to EBS eligibility and operation, should be: a) continued without change; b) amended; or c) rescinded consistent with the objectives set forth in the Regulatory Flexibility Act as codified in Section 610 of Title 5 of the U.S. Code. Specifically, Section 610 requires the periodic review by Federal Agencies of rules that may have a significant economic impact on a substantial number of small entities. The Rule requires

the Agency, in evaluating such rules, to consider: 1) the continued need for the rule; 2) the nature of any complaints or comments received; 3) the complexity of the rule; 4) whether the rule is duplicative of other federal, state or local rules; and 5) the length of time since the rule's last re-evaluation, and the effect of any interceding changes in technology, economic conditions or other factors.

HITN, founded in 1981, is a 501(c)(3) non-profit non-stock New York corporation, whose mission is to promote educational opportunities for Hispanic Americans through multiple media outlets and telecommunications services. HITN-TV, the first and only 24-hour a day Spanish language public interest television channel in the United States, is presently carried on Dish Network and Direct TV, as well as the Time Warner and Comcast cable networks. HITNet, a satellite-based broadband service delivered via HITN's state-of-the-art satellite platform at the New York Brooklyn Navy Yard, is currently providing Internet access to underprivileged schools and libraries throughout Puerto Rico. HITN also holds over 60 station authorizations in the Educational Broadband Service ("EBS") for facilities in markets throughout the United States and Puerto Rico. HITN's EBS facilities are presently used to provide educational video programming and increasingly, through a partnership with Clearwire Corporation, advanced wireless broadband services. HITN, as perhaps the largest holder of EBS authorizations in the United States, and as a non-profit educational entity that establishes its EBS eligibility under Section 27.1201(a)(3), has a significant interest in any proposed changes to that rule or any other rule section affecting EBS operations.

The Rules being considered under the above-referenced Public Notice that could affect EBS licensees include: 1) 27.1201(a)(3) concerning EBS eligibility; 2) 27.1208 concerning service areas; and 3) 27.1212 concerning EBS license terms.¹ HITN, generally supports the retention of these rules,² but is limiting its detailed comments herein only to the Commission's consideration of 27.1201(a)(3).³ To the extent permitted by the Commission, HITN may wish to comment on the other rules presently under consideration in response to any comments submitted by other parties in this proceeding.

II. EBS Eligibility

The Commission has sought comment on the continued need, purpose and requirements of Section 27.1201(a)(3). That rule sets forth the eligibility requirements

¹ While the Commission has also sought comment on its review of 27.1213 regarding designated entity provisions for BRS auctions commencing prior to January 1, 2004, and there has been no explicit statement from the Commission that Section 27.1213 would apply to EBS white space auctions occurring after January 1, 2004, HITN would support such an application. Further, HITN advocates that the "small business provisions" should be retained to ensure that educators and non-profit entities have a fair chance should an auction in this spectrum take place.

² HITH sees no present need to alter the ten-year license term for EBS or BRS stations contained in Section 27.1212, unless the Commission wishes to extend it to fifteen years in order to bring it in line with the currently permissible time period for which EBS station excess capacity may be leased. Additionally, to the extent BTAs remain applicable to the BRS and EBS services, HITN believes that there will continue to be a need for Section 27.1208 which defines a BTA and identifies specific areas where licenses have been issued outside of traditional BTAs.

³ Perhaps because of the year in which they were adopted, the Commission has not proposed a review of Section 27.1201(a)(4) or Section 27.1201(b). In Comments filed by HITN on January 10, 2005, in the Further Notice of Proposed Rulemaking in WT Docket No. 03-66 at pp. 9-10, HITN proposed the elimination of the so-called four channel restriction contained in Section 27.1201(b). Additionally, in Reply Comments filed by HITN on February 8, 2005, in the Further Notice of Proposed Rulemaking in WT Docket No. 03-66 at pp 8-9, HITN proposed elimination of Section 27.1201(a)(4) which requires the creation of a local programming committee by non local EBS applicants, as well as the requirement that educational entities supplying qualifying letters for such applicants, pursuant to Section 27.1201(a)(3), confirm in such letters that a member of their staff will serve on such a committee. HITN believes, for the same reasons discussed herein, that such committees and participation confirmations in qualifying letters are no longer needed where an EBS applicant proposes to provide broadband services, and therefore will have no control over the content of the services provided.

for accredited educational institutions, governmental organizations engaged in the formal education of enrolled students, or nonprofit organizations whose purposes are educational and include providing educational and instructional television material to such accredited educational institutions or governmental organizations, only where such entities propose to establish eligibility through the provision of services to the enrolled students of another accredited educational institution or governmental entity.⁴ The rule requires applicants to provide documentation from proposed receive sites demonstrating they will receive and use the applicants' educational usage.

HITN believes that over the years since the rule's inception, non-profit and non-local educational organizations have proved to be valuable partners for local educational institutions, providing essential educational content, while relieving local educational institutions of the need to invest scarce resources in the infrastructure and technical expertise needed to maintain, operate and program EBS stations. Nonetheless, HITN believes that the rule remains essential to ensuring that local educational institutions will receive the benefits of an applicant's proposed services. Additionally, HITN maintains that the rule is neither duplicative of other federal, state or local rules, nor is it unduly complex.

However, in light of recent fundamental changes to other rules governing the EBS service, which were geared primarily toward increasing the nature and types of services that may be offered over EBS stations, HITN believes that certain amendments to the rule

⁴ See 47 CFR § 27.1201(a) and (a)(3). In the case of a non-profit entity, that would include all situations. However, subsection (a)(3) would only affect accredited educational institutions or governmental entities that were proposing to establish eligibility based on service to enrolled students other than their own.

may be appropriate. The rule, as originally crafted, anticipated the provision of letters from accredited schools regarding their intent to receive and use educational video programming. It is now anticipated that many entities qualifying to operate EBS stations may be contemplating the provision of educational content or education facilitating services that will not include instructional video programming created by, or packaged for delivery by, the EBS licensee. For example, in the case of broadband services, an educational institution may be interested in receiving and using any of the following types of services at fixed, temporary fixed or mobile sites: voice over IP; one or two-way streamed video content; teleconferencing and remote classroom hookups; high speed Internet or data services; and wireless local or wide area networks. Accordingly, the rule should be updated in a manner that recognizes that a receive site may be interested in receiving an array of such education enhancing broadband services, which it intends to use in conjunction with its educational services to students enrolled in for credit classes.⁵ Such a letter would recognize the reality that educational content available over the World Wide Web and downloaded at any specific site is essentially user-directed. Therefore, while neither the service provider nor the site's school administrator can preview or make specific advance statements regarding the content that will be accessed, the most that can be said is that the service will be made available for educational purposes, to students and faculty in a manner and in a setting conducive to such usage.

Additionally, in light of the transition of the EBS service from a site-based to a geographic licensing structure, restrictive language regarding the absolute distance from

⁵ Naturally, where an EBS applicant is proposing to provide only traditional video based educational programming, the current form of the receive site statement would suffice.

the transmit site for qualified schools supplying letters must be revised. While the distance may be retained, it should be based on distance from the proposed center reference point, and should be further qualified to ensure that such school will be within the proposed geographic service area.

The suggested wording for the revised rule is provided below. Word deletions are represented using a strikethrough feature, while proposed additions to existing rule language are shown in bold type.

*(3) Those applicant organizations whose eligibility is established by service to accredited institutional or governmental organizations must submit documentation from proposed receive sites demonstrating that they will receive and use the applicant's educational usage. In place of this documentation, a state educational television (ETV) commission may demonstrate that the public schools it proposes to serve are required to use its proposed educational usage. Documentation from proposed receive sites which are to establish the eligibility of an entity not serving its own enrolled students for credit should be in letter form, written and signed by an administrator or authority who is responsible for the receive site's curriculum planning. No receive site more than 35 miles from the ~~transmitter site,~~ **proposed station's central reference point, or outside the applicants' proposed GSA,** shall be used to establish basic eligibility. **Where broadband or data services are proposed, the letter should indicate that such data services will be used for educational purposes by faculty and students in conjunction with the site's for credit curriculum. The administrator must indicate** ~~indicate~~ **Where traditional educational or instructional video services are proposed, the letter should indicate that the applicant's program offerings have been viewed and that such programming will be incorporated in the site's curriculum. Where traditional educational or instructional video services are proposed, the** ~~The~~ **letter should also discuss the types of programming and hours per week of formal and informal programming expected to be used and the site's involvement in the planning, scheduling and production of programming. If other levels of authority must be obtained before a firm commitment to utilize the service can be made, the nature and extent of such additional authorization(s) must be provided.***

Accordingly, HITN respectfully requests the Commission modify its Rules in accordance with the discussion set forth herein.

Respectfully submitted,

HISPANIC INFORMATION AND
TELECOMMUNICATIONS NETWORK

By: 

Rudolph J. Geist
Evan D. Carb
RJGLaw LLC
1010 Wayne Avenue
Suite 950
Silver Spring, MD 20910
(301) 589-2999

Its Attorneys

September 1, 2005

CERTIFICATE OF SERVICE

I, Norman Liu, hereby certify that copies of the foregoing Comments of Hispanic Information and Telecommunications Network, Inc. were served this 1st day of September, 2005 on the following parties via electronic mail.

Bryan Tramont
Office of Chairman Michael K. Powell
Federal Communications Commission
445 12th St., SW
Room 8-B201
Washington, D.C. 20554
E-Mail: bryan.tramont@fcc.gov

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C252
Washington, D.C. 20554
E-Mail: john.muleta@fcc.gov

Jennifer Manner
Office of Commissioner Abernathy
Federal Communications Commission
445 12th St., SW
Room 8-B115
Washington, D.C. 20554
E-Mail: jennifer.manner@fcc.gov

John Schauble
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-C336
Washington, D.C. 20554
E-Mail: john.schauble@fcc.gov

Paul Margie
Office of Commissioner Copps
Federal Communications Commission
445 12th St., SW
Room 8A-302
Washington, D.C. 20554
E-Mail: paul.margie@fcc.gov

D'wana Terry, Division Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-C321
Washington, D.C. 20554
E-Mail: dwanna.terry@fcc.gov

Samuel Feder
Office of Commissioner Martin
Federal Communications Commission
445 12th St., SW
Room 8-A204
Washington, D.C. 20554
E-Mail: sam.feder@fcc.gov

Shellie Blakeney
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C300
Washington, D.C. 20554
E-Mail: shellie.blakeney@fcc.gov

Barry Ohlson
Office of Commissioner Adelstein
Federal Communications Commission
445 12th St., SW
Room 8-C302
Washington, D.C. 20554
E-Mail: barry.ohlson@fcc.gov

Charles Oliver
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C124
Washington, D.C. 20554
E-Mail: charles.oliver@fcc.gov

Nancy Zacezek
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C124
Washington, D.C. 20554
E-Mail: nancy.zacek@fcc.gov

Stephen Zak
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C124
Washington, D.C. 20554
E-Mail: stephen.zak@fcc.gov

Andrea Kelly
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-A760
Washington, D.C. 20554
E-Mail: andrea.kelly@fcc.gov

Gary Michaels
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-A760
Washington, D.C. 20554
E-Mail: gary.michaels@fcc.gov

Joel Taubenblatt
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4A260
Washington, D.C. 20554
E-Mail: joel.taubenblatt@fcc.gov

Uzoma C. Onyeije
Wireless Telecommunications Bureau
Federal Communications Commission
Room 3-C217
445 12th St., SW
Washington, D.C. 20554
E-Mail: uzoma.onyeije@fcc.gov

Catherine Seidel
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554
E-Mail: cathy.seidel@fcc.gov

Genevieve Ross
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C124
Washington, D.C. 20554
E-Mail: genevieve.ross@fcc.gov

William Huber
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-A760
Washington, D.C. 20554
E-Mail: william.huber@fcc.gov

Erik Salovarra
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-A760
Washington, D.C. 20554
E-Mail: erik.salovaara@fcc.gov

Best Copy and Printing, Inc.
Portals
225 12th St., SW
Courtyard Level
Washington, DC 20554
fcc@bcpiweb.com

Todd Gray
Dow Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
tgray@dlalaw.com

A handwritten signature in black ink, appearing to read "T. Gray", is written over a horizontal line.